

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/587,445

**Examiner**

EMILY M. MORGAN

**Applicant(s)**

RAMSAUER, DIETER

**Art Unit**

3677

**—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —**

THE REPLY FILED 24 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a)  The period for reply expires 3 months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 30,31,34-36,42,53 and 54

Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13.  Other: Interview Summary attached.

/VICTOR BATSON/

Supervisory Patent Examiner, Art Unit 3677

Continuation of 3. NOTE: The amendment filed 1/14/2010 included claim language of undesignated parts "flat pieces". Examiner made an assumption as stated in the final action 3/17/2010. The amendment changes the assumption made by the examiner, and hence the amendment filed 6/24/2010 raises new issues.

Continuation of 11, does NOT place the application in condition for allowance because: Since the "flat pieces" of amended claim 30 were not designated in the figures as of the final rejection 3/17, examiner had to make an educated assumption as to what the flat metal pieces were in order to write the final. Claim 30 states that "holding elements which project in a resilient manner". Applicant has disclosed many "holding elements", and only holding elements 536 in figure 11b [0096] where disclosed in both figure and specification. Based on the figure, examiner concluded by the figure that they are in a similar orientation as those in reference Young. Since applicant had not disclosed the holding elements as "flat pieces" in any of the elected drawings or correlating specification, examiner was forced to conclude the arrangement of the flat pieces in an embodiment not elected. Applicant's drawing amendment discloses that the flat pieces are present in the elected embodiment figures 19a-h as 1136. Because this defines the part and alters examiner's assumption, this raises new issues. Examiner is also wary of the amendment because in the specification as originally filed, corresponding paragraphs [0103] and [0104] do not disclose that these are embodiments of the holding elements. Since this amendment drastically changes the interpretation of the holding element and the comprising parts, the amendment raises new issues. Regarding the art rejection, since examiner had made her assumption clear based on the specification and the drawings, and based the rejection on this assumption. Applicant contends that the two flat pieces of Young do not touch, however examiner stated that they are formed and used in the same configuration as assumed in figure 11b. The amendment now discloses the parts, and this requires further search and consideration.